

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

QUIWANERA SPIKES,
 Plaintiff,

vs.

EXTRA STORAGE SPACE, *et al.*,
 Defendants.

Case No. 2:14-cv-00796-APG-CWH

FINDINGS AND
RECOMMENDATION

This matter is before the Court on Plaintiff's Amended Complaint (#4), filed on June 4, 2014. On May 21, 2014, the Court granted Plaintiff's Motion/Application for Leave to Proceed *in forma pauperis* (#1). In addition, the Court denied Plaintiff's Complaint (#1-1) without prejudice for failure to state a claim for relief and granted Plaintiff thirty days to submit an amended complaint. Plaintiff timely filed an amended complaint, which the Court will now screen.

I. Screening the Amended Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Allegations of a *pro se* complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curium). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a

1 ruling on a question of law. *See Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir.
2 2000). A properly pled complaint must provide a short and plain statement of the claim showing that
3 the pleader is entitled to relief.” Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
4 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands “more than labels
5 and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556
6 U.S. 662, 678 (2009) (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as
7 true all well-pled factual allegations contained in the complaint, but the same requirement does not
8 apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the elements of a cause of action,
9 supported only by conclusory allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the
10 complaint have not crossed the line from plausible to conceivable, the complaint should be dismissed.
11 *Twombly*, 550 U.S. at 570.

12 Additionally, the court cannot refer to a prior pleading in order to make an amended complaint
13 complete. Local Rule 15-1 requires that an amended complaint be complete in itself without reference
14 to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original
15 complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
16 complaint, the original pleading no longer serves any function in this case. Therefore, in an amended
17 complaint, each claim and the involvement of the defendant must be sufficiently alleged.

18 **A. Diversity Jurisdiction**

19 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil actions
20 in diversity cases “where the matter in controversy exceeds the sum or value of \$75,000” and where the
21 matter is between “citizens of different states.” Plaintiff asserts damages of \$25,000 and Plaintiff and
22 Defendants appear to be Nevada citizens so there is no diversity jurisdiction in this case.

23 **B. Federal Question Jurisdiction**

24 As a general matter, federal courts are courts of limited jurisdiction and possess only that power
25 authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Pursuant to 28
26 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil actions arising under the
27 Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either where
28 federal law creates the cause of action or ‘where the vindication of a right under state law necessarily

turn[s] on some construction of federal law.” *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of federal-question jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under the well-pleaded complaint rule, “federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Id.* Here, Plaintiff appears to be alleging a tort claim for conversion of her personal property. However, Plaintiff failed to cite any authority or provide a statement that identifies the causes of actions she wishes to bring against Defendants. Further, conversion is a state law claim so no federal question jurisdiction exists. Plaintiff was previously given leave to amend to state a claim for relief. The Court finds that Plaintiff has failed to state a federal cause of action and therefore, her amended complaint should be dismissed with prejudice and this action closed.

Based on the foregoing and good cause appearing therefore,

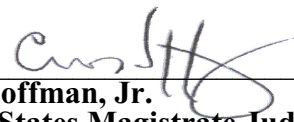
RECOMMENDATION

IT IS HEREBY RECOMMENDED that Plaintiff’s Amended Complaint (#4) be **dismissed with prejudice** because Plaintiff failed to state a claim upon which relief can be granted.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court’s order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

1 Dated this 5th day of June, 2014.

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5 **C.W. Hoffman, Jr.**
6 **United States Magistrate Judge**
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